HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No.8463 of 2007

Between:

Government of Andhra Pradesh,
Rep. By its Secretary, Home Department,
Secretariat, Hyderabad and two others.

… Petitioners

And

C. Dinesh

… Respondent

:: ORDER::

Counsel for the Petitioners: Government Pleader for Services – I.

April 24, 2007

Per G.S. Singhvi, CJ

The Government of Andhra Pradesh and two others have filed this petition under Article 226 of the Constitution of India for setting aside the direction given by the Andhra Pradesh Administrative Tribunal (for short, 'the Tribunal') in O.A.No.638 of 2006 for reinstatement of respondent – Sri C. Dinesh on the post of Junior Assistant.

By an order dated 2-2-2001, Superintendent of Police, Railways, Secunderabad (petitioner No.2 herein) appointed the respondent as Junior Assistant on compassionate ground because his father Shri C. Sudershan, who was employed in the department, died in harness. The appointment of the respondent was subject to the condition that he should acquire the essential qualification i.e. Intermediate within a period of three years. The respondent could not acquire the requisite qualification despite the fact that the period specified in the order of appointment was extended by two years. Consequently, petitioner No.2 issued Memo dated 22-12-2005 for termination of his service.

The respondent challenged the aforementioned Memo by filing an application under Section 19 of the Administrative Tribunals Act, 1985 (for short, 'the Act'). He relied on the policy contained in G.O.Ms.No.289, General Administration (Services-A) Department, dated 4-8-2000 and pleaded that the appointing authority should have extended the period by another year so as to enable him to acquire the requisite qualification and, in any case, his service could not have been terminated without giving him notice and opportunity of hearing.

In the counter filed on behalf of the non-applicants (the petitioners herein), it was averred that the applicant's service was terminated because he could not acquire the essential qualification

within the period of three years specified in the order of appointment and the extended period of two years. It was further averred that the competent authority had informed the applicant from time to time that his failure to acquire the necessary qualification would result in termination of his service and, therefore, he cannot complain of the violation of the rules of natural justice.

On a consideration of the pleadings of the parties and G.Os. issued by the government, the learned Judicial Member of the Tribunal allowed the application in the following terms:

> "In view of O.A.No.1894/2006 being allowed, the applicant shall be taken back into service forthwith and after the applicant is taken back into service, an opportunity should be given to him to file a detailed representation to the 2nd respondent and 1st respondent herein, in view of the fact that the applicant has acquired the requisite qualification and the respondents shall pass appropriate orders and communicate the same to the applicant. Accordingly, this O.A. is allowed."

Learned Government Pleader argued that the direction given by the Tribunal is liable to be set aside because the learned Judicial Member did not deal with the specific objection taken in the counter filed on behalf of the petitioners that the applicant (the respondent herein) is not entitled to the benefit of G.O.Ms.No.289, dated 4-8-2000. He emphasized that the policy contained in that G.O. was one time measure and the same was not available for extension of the time limit specified in G.O.Ms.No.969, General Administration (Services-A) Department, dated 27-10-1995. Another contention of the learned Government Pleader is that the respondent's failure to pass Intermediate examination in a period of five years left petitioner No.2 with no option but to terminate his service in accordance with the conditions of appointment and the rules of natural justice cannot

be invoked by the respondent for invalidation of order dated 22-12-2005.

We have given serious thought to the arguments of the learned Government Pleader. We are inclined to agree with him that the learned Member of the Tribunal committed a serious error by directing reinstatement of the respondent without adjudicating on the issue of applicability of the policy contained in G.O.Ms.No.289, dated 4-8-2000 to his case. We also agree with the learned Government Pleader that on account of his failure to pass the Intermediate examination within the time limit specified in the order of appointment and the extended period of two years, the respondent lost his right to continue in service and petitioner No.2 did not commit any illegality by terminating his service. However, keeping in view the fact that the respondent was appointed on compassionate ground and during the interregnum he has passed the Intermediate examination, we do not consider it proper to upset the direction given by the Tribunal.

With the above observations, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP No.10859 of 2007 filed by the petitioners for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

April 24, 2007

svs